

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Comtech Mobile Datacom Corporation

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File No. EB-07-SE-208
Acct. No. 200832100079
FRN: 0007773005

ORDER

Adopted: September 5, 2008

Released: September 8, 2008

By the Deputy Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau ("Bureau") and Comtech Mobile Datacom Corporation ("CMDC"). The Consent Decree terminates an investigation by the Bureau against CMDC for possible violations of section 301 of the Communications Act of 1934, as amended ("Act"),¹ and sections 25.102, 25.117, 25.136(d) and 25.276(a) of the Commission's Rules ("Rules")² regarding CMDC's modification and operation of its mobile earth terminal ("MET") system.

2. The Bureau and CMDC have negotiated the terms of a Consent Decree that resolve these matters. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to these matters, we conclude that our investigations raise no substantial or material questions of fact as to whether CMDC possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Act,³ and sections 0.111 and 0.311 of Rules,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Joan M. Griffin, Esq., Counsel for Comtech Mobile Datacom Corporation, Kelley Drye & Warren LLP, Washington Harbour, Suite 400,

¹ 47 U.S.C. § 301.

² 47 C.F.R. §§ 25.102, 25.117, 25.136(d) and 25.276(a).

³ 47 U.S.C. § 154(i).

⁴ 47 C.F.R. §§ 0.111 and 0.311.

3050 K Street, N.W., Washington, D.C., 20007-5108 and Daniel S. Wood, President, Comtech Mobile Datacom Corporation, 20430 Century Blvd., Germantown, Maryland 20874.

FEDERAL COMMUNICATIONS COMMISSION

Susan McNeil
Deputy Chief, Enforcement Bureau

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-07-SE-208
)	Acct. No. 200832100079
Comtech Mobile Datacom Corporation)	FRN No. 0007773005
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CONSENT DECREE

The Enforcement Bureau (“Bureau”) and Comtech Mobile Datacom Corporation (“CMDC”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether CMDC violated section 301 of the Communications Act of 1934, as amended (“Act”)¹ and sections 25.102, 25.117, 25.136(d) and 25.276(a) of the Commission’s Rules² by modifying and operating its mobile earth terminal (“MET”) system without appropriate authorization.

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (c) “CMDC” means Comtech Mobile Datacom Corporation and its predecessors-in-interest and successors-in-interest.
 - (d) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) “Effective Date” means the date on which the Bureau releases the Adopting Order.
 - (f) “Investigation” means the investigation commenced by the Bureau’s August 27, 2007 Letter of Inquiry (“LOI”)³ regarding whether CMDC violated section 301 of the Act and sections 25.102, 25.117, 25.136(d) and 25.276(a) of the Commission’s Rules by modifying and operating its MET system without appropriate authorization.
 - (g) “MET” means mobile earth terminal.

¹ 47 U.S.C. § 301.

² 47 C.F.R. §§ 25.102, 25.117, 25.136(d) and 25.276(a).

³ Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division Enforcement Bureau to Joan M. Griffin, Counsel for Comtech Mobile Datacom Corporation (August 27, 2007).

- (h) “Order” or “Adopting Order” means an Order of the Bureau adopting the terms and conditions of this Consent Decree without change, addition, deletion, or modification, and formally terminating the Investigation.
- (i) “Parties” means CMDC and the Bureau.
- (j) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. Under section 301 of the Act, “[n]o person shall use or operate any apparatus for the transmission of energy or communications or signals by radio ... except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.” Under section 25.102 of the Rules, “[n]o person shall use or operate apparatus for the transmission of energy or communications or signals by space or earth stations except under, and in accordance with, an appropriate authorization granted by the Federal Communications Commission.” Section 25.276(a) of the Rules requires that earth stations transmit to appropriate points of communications, while section 25.136(d) of the Rules requires that earth stations operating in the lower part of the L-band have certain minimum capabilities “to ensure compliance with footnote 5.353A and the priority and real-time preemption requirements imposed by Footnote US 315” as set forth in section 2.106 of the Rules. Pursuant to section 25.117 of the Rules, no modification which affects the parameters or terms and conditions of a station authorization may be made except upon application to and grant of such application by the Commission.

3. On August 27, 2007, the Bureau issued the LOI to CMDC. The LOI directed CMDC, among other things, to submit a sworn written response to a series of questions relating to the modification and operation of CMDC’s MET system. CMDC responded to the LOI on September 26, 2007.⁴

III. TERMS OF AGREEMENT

4. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

5. **Jurisdiction.** CMDC agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

6. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the date on which the Bureau releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission order.

7. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, CMDC agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new

⁴ See Letter from Joan M. Griffin, Esq., counsel to Comtech Mobile Datacom Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission (Sept. 26, 2007).

material evidence, the Bureau will not use the facts developed in this investigation through the Effective Date of the Consent Decree, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against CMDC concerning the matters that were the subject of the investigation. The Bureau also agrees that it will not use the facts developed in this investigation through the Effective Date of this Consent Decree, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against CMDC with respect to CMDC's basic qualifications, including its character qualifications, to be a Commission licensee or authorized common carrier.

8. **Compliance Plan.** For purposes of settling the matters set forth herein, CMDC agrees to maintain a Compliance Plan to ensure future compliance with the Act, the Commission's Rules, and the Commission's orders. Specifically, CMDC has taken and will continue to take the following steps:

- (a) **Compliance Officer.** CMDC has designated one member of its senior management team (no less than vice president or equivalent) to be the FCC compliance officer. The FCC compliance officer will be knowledgeable about the configuration and operation of CMDC's MET system. The FCC compliance officer will also be familiar with CMDC's blanket MET system license and the FCC Rules applicable to operation under and modification of the terms and conditions of the license. The FCC compliance officer may rely on outside consultants in complying with these requirements.
- (b) **Staff training.** The FCC compliance officer will be responsible for ensuring that all appropriate CMDC staff receive training regarding CMDC's blanket MET system license and the FCC Rules applicable to operation under and modification of the terms and conditions of the license. Such training will be completed within ninety days of the Effective Date. Any new employees for whom such training would be appropriate will receive training within sixty days of the commencement of their employment.
- (c) **Compliance Reports.** CMDC will file compliance reports with the Commission ninety (90) days after the Effective Date, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date. Each report shall include a compliance certificate from an officer, as an agent of CMDC, stating that the officer has personal knowledge that CMDC has established operating procedures intended to ensure compliance with this Consent Decree, together with an accompanying statement explaining the basis for the officer's compliance certification. All reports shall be submitted to Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.
- (d) **Termination Date.** Unless stated otherwise, the requirements of this Consent Decree will expire twenty-four (24) months from the Effective Date.
- (e) **Entire Agreement.** The Parties agree that this Consent Decree contains the entire agreement between the Parties with respect to its subject matter and supersedes any prior or contemporaneous agreements or understandings of any kind with respect to such subject matter. For the purposes of 47 U.S.C. § 503(b)(6)(B), the Parties agree that the relevant date is May 30, 2007.

9. **Voluntary Contribution.** CMDC agrees that it will make a voluntary contribution to the United States Treasury in the amount of \$25,000. The payment will be made within 30 days after the Effective Date of the Adopting Order. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000.

Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code).

10. **Waivers.** CMDC waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Bureau issues an Order adopting the Consent Decree without change, addition, modification, or deletion. CMDC shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither CMDC nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and both CMDC and the Commission shall waive any statutory right to a trial *de novo* with respect to the issuance of the Adopting Order and shall consent to a judgment incorporating the terms of this Consent Decree. CMDC hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree. By this Consent Decree, CMDC neither waives nor alters its right to assert and seek protection from disclosure of any privileged or otherwise confidential and protected documents and information, or to seek appropriate safeguards of confidentiality for any competitively sensitive or proprietary information.

11. **Severability.** The Parties agree that if any of the provisions of the Adopting Order or the Consent Decree shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Adopting Order or Consent Decree, but rather the entire Adopting Order or Consent Decree shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly. In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, the Consent Decree shall become null and void and may not be used in any manner in any legal proceeding.

12. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which CMDC does not expressly consent), that provision will be superseded by such Commission rule or order.

13. **Successors and Assigns.** CMDC agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

14. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission’s Rules and orders. The Parties agree that this Consent Decree is for settlement purposes only, and that by agreeing to this Consent Decree, CMDC does not admit or deny any noncompliance, violation, or liability associated with or arising from its actions or omissions involving the Act or the Commission’s Rules.

15. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

16. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

17. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

18. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

Susan McNeil
Deputy Bureau Chief
Enforcement Bureau

Daniel S. Wood
President
Comtech Mobile Datacom Corporation

Date

Date